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Paper No. 7

In re Application of
Ronald E. Gilbert *et al*
Application No. 10/047,198
Filed: October 26, 2001
Attorney Docket No. PY2-023

NOV 16: 2004
DECISION ON PETITION
Director's Office
Group 3700

This is a decision on the petition filed on February 4, 2004 by which petitioners request withdrawal of the holding that this application stands abandoned for failure to file a timely and proper reply to the Office letter dated May 7, 2003. The petition is being considered under 37 CFR 1.181, and no fee is required.

The petition is dismissed.

Petitioners allege that this application is not abandoned because petitioners did not receive the Office letter in question.

The Notice published at 1156 OG 53, as discussed in MPEP § 711.03(c), subsection entitled "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action", defines the minimum showing of fact that must accompany an allegation of nonreceipt of Office correspondence in support of an allegation that Office correspondence was not received. The Notice states:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. **A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.** For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. (Emphasis added.)

The showing submitted by petitioner in support of the allegation of nonreceipt of the Office letter dated May 7, 2003 is not supported by a copy of the docket record as required by the Notice quoted above. Accordingly, there is presently no basis upon which to find that petitioners did not receive the Office letter in question. Therefore, the holding of abandonment cannot, at present, be withdrawn.

Petitioners may file a renewed petition, without fee, addressing the matters raised above. The renewed petition should be directed to Technology Center 3700 at the address in the letterhead above, with no mail stop specified. The renewed petition must be filed within two months of the date of this decision. See 37 CFR 1.181(f)

The application is being stored as an abandoned file pending further action by petitioners.

PETITION DISMISSED.

Richard A. Bertsch, Director
Technology Center 3700

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